

No. 2044

United States

Circuit Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

TSUJI SUEKICHI,

Appellee.

In the Matter of the Application of TSUJI SUEKICHI
for a Writ of Habeas Corpus.

Transcript of Record.

Upon Appeal from the United States District Court for the
Territory of Hawaii.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

For Petitioner, Suekichi Tsuji:

J. LIGHTFOOT, Esq., 207-208 McCandless
Bldg., Honolulu, T. H.

For Respondent, Raymond C. Brown, U. S. Immi-
gration Inspector in Charge at the Port of
Honolulu:

ROBERT W. BRECKONS, United States Dis-
trict Attorney, Honolulu, T. H. [1*]

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

No. 42.

In the Matter of the Application of SUEKICHI
TSUJI, for a Writ of Habeas Corpus.

Statement [of Clerk, District Court].

Time of Commencing Suit:

July 3, 1911: Verified petition for writ of habeas cor-
pus filed and writ issued to the United States
Marshal for the District of Hawaii.

Names of Original Parties:

Petitioner: Suekichi Tsuji.

Respondent: Raymond C. Brown, U. S. Inspector of
Immigration in charge at the Port of Honolulu.

Dates of the Filing of the Pleadings.

July 3, 1911: Petition.

July 18, 1911: Return of Raymond C. Brown to writ
of habeas corpus.

July 19, 1911: Supplemental return of Raymond C.
Brown to writ of habeas corpus.

*Page number appearing at foot of page of original certified Record.

July 24, 1911: Answer to return and 'supplemental return of Raymond C. Brown.

Service of Process.

July 3, 1911: Writ issued and delivered to the United States Marshal for the District of Hawaii. Said writ afterwards returned into court with the following return by the said United States Marshal:

“The within petition and writ of habeas corpus was received by me on the 3d day of July, A. D. 1911, and is returned as executed upon RAYMOND C. BROWN, United States [2] Immigration Inspector at the Port of Honolulu, T. H., by handing to and leaving with him duly certified copies of the within petition and writ of habeas corpus on the 3d day of July, A. D. 1911. Petition and writ of habeas corpus returned to Clerk U. S. District Court on this 6th day of July, A. D. 1911.”

July 26, 1911: Hearing on return and supplemental return of Immigration Inspector.

The above hearing was had before Honorable Charles F. Clemons, Judge of said Court.

Decision.

July 29, 1911: Decision of cause.

July 31, 1911: Judgment filed and entered.

August 7, 1911: Petition for appeal.

United States of America,
Territory of Hawaii,—ss.

I, A. E. Murphy, Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct

statement showing the time of commencement of the above-entitled suit; the names of the original parties thereto; the several dates when the respective pleadings were filed; and account of the proceedings showing the service of the summons and the time when the judgment herein was rendered and the Judge rendering the same, in the matter of the Application of Suekichi Tsuji, for a Writ of Habeas Corpus, Number 42, in the United States District Court for the Territory of Hawaii. [3]

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court this 11th day of September, A. D. 1911.

[Seal] A. E. MURPHY,
Clerk, United States District Court, Territory of
Hawaii. [4]

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

In the Matter of the Application of SUEKICHI
TSUJI, for a Writ of Habeas Corpus.

Petition for a Writ of Habeas Corpus.

To the Honorable CHARLES F. CLEMONS, Judge
of the District Court of the United States, in and
for the District and Territory of Hawaii:

The undersigned, Suekichi Tsuji, petitioner
herein, respectfully represents and shows to this
Honorable Court as follows:

FIRST:

The petitioner is a subject of the Emperor of
Japan; that heretofore, to wit, on or about the 27th

day of July, A. D. 1906, petitioner arrived at Honolulu, Oahu, aboard the S. S. "Manchuria," he having embarked on said steamship in Japan, and thereupon petitioner was duly admitted to the Territory of Hawaii, and since the last-mentioned date has had his domicile in Honolulu aforesaid.

SECOND:

That prior to the arrival of petitioner in the Territory of Hawaii as aforesaid, he had been duly and lawfully married according to the laws of the Empire of Japan to Masa Tsuji; and that said Masa Tsuji arrived in Honolulu aforesaid, on or about the 28th day of August, A. D. 1906, aboard the S. S. "America Maru"; and at all times since the last-mentioned date to the date hereof, the said Masa Tsuji has resided and had her domicile in Honolulu aforesaid.
[5]

THIRD:

That on or about the 26th day of September, A. D. 1910, petitioner departed from the port of Honolulu aboard the S. S. "China," bound for the Empire of Japan, to which country petitioner desired to go for a short visit, and upon leaving said port of Honolulu and at all times thereafter, petitioner intended to return to said Honolulu and to continue to reside in said Honolulu; that said petitioner, during his intended temporary absence as aforesaid, left his said wife in Honolulu aforesaid.

FOURTH:

That petitioner returned to the port of Honolulu on or about the 17th day of June, A. D. 1911, aboard the S. S. "Korea."

FIFTH:

That upon the arrival of petitioner at the port of Honolulu, on the date last aforesaid, and at all times since the last-mentioned date, Raymond C. Brown, Esq., United States Immigration Inspector at the said port of Honolulu, has refused a landing to your petitioner, as petitioner is informed and believes, and upon such information and beliefs alleges and avers, under the claim or pretense that your petitioner is an immigration alien and as such, a person belonging to an excluded class under the Immigration Laws of the United States; whereas in truth and in fact, your petitioner is a nonimmigrant alien and not subject to said immigration laws.

SIXTH:

And your petitioner further shows that he is held in custody, detained, imprisoned and deprived of his liberty by said Raymond C. Brown, as petitioner is informed and believes and upon such information and beliefs alleges and avers, under and *by of* the claim as aforesaid; and your petitioner further shows that said holding in custody, detention and imprisonment is illegal for the reasons hereinabove set forth.

[6]

WHEREFORE, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of habeas corpus, to be directed to the said Raymond C. Brown, Immigration Inspector as aforesaid, may issue in this behalf, so that your petitioner may be forthwith brought before this Honorable

Court, to do, submit to, and receive what the law may direct.

Dated Honolulu, July 3, 1911.

(Sgd.) JAPANESE CHARACTERS.

(SUEKICHI TSUJI.)

United States of America,
Territory of Hawaii,—ss.

Suekichi Tsuji, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition subscribed by him; that he has read the same and knows the contents thereof, and that the said statements made are true as he verily believes.

(Sgd.) JAPANESE CHARACTERS.

(SUEKICHI TSUJI.)

Subscribed and sworn to by said Suekichi Tsuji before me, and by me subscribed, on this 3d day of July, A. D. 1911.

[Seal] (Sgd.) J. B. LIGHTFOOT,
Notary Public, District of Honolulu, Territory of
Hawaii.

[Order Allowing Writ to Issue.]

Let the writ issue as herein prayed.

July 3d, 1911.

(Sgd.) CHARLES F. CLEMONS,
Judge of the United States District Court, Hawaii.

*In the District Court of the United States, in and for
the District and Territory of Hawaii.*

In the Matter of the Application of SUEKICHI
TSUJI, for a Writ of Habeas Corpus.

Writ of Habeas Corpus.

The United States of America, to Raymond C.
Brown, Esq., United States Immigration In-
spector, at the Port of Honolulu, Territory of
Hawaii:

WE COMMAND YOU that the body of Suekichi
Tsuji, in your custody detained, as it is said, together
with the day and cause of his caption and detention,
you safely have before the Honorable CHARLES F.
CLEMONS, Judge of our District Court of the
United States, in and for the District and Territory
of Hawaii, to do and receive all and singular those
things which the said Judge shall then and there con-
sider of him in this behalf; and have you then and
there this Writ.

Witness the Honorable CHARLES F. CLEMONS,
Judge of the District Court of the United States, in
and for the District and Territory of Hawaii, this
3d day of July, A. D. 1911.

[Seal]

A. E. MURPHY,
Clerk.

By (Sgd.) F. L. Davis,
Deputy Clerk. [8]

United States Marshal's Office.

MARSHAL'S RETURN.

The within petition and writ of habeas corpus was
received by me on the 3d day of July, A. D. 1911, and

is returned as executed upon RAYMOND C. BROWN, United States Immigration Inspector at the Port of Honolulu, T. H., by handing to and leaving with him duly certified copies of the within petition and writ of habeas corpus on the 3d day of July, A. D. 1911. Petition and writ of habeas corpus returned to clerk of U. S. District Court on this 6th day of July, A. D. 1911.

(Sgd.) E. R. HENDRY,
United States Marshal.

[Endorsed]: No. 42. (Title of Court and Cause.)
Petition and Writ. Filed Jul. 3, 1911. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk.
[9]

[Order Allowing Respondent Until July 13, 1911, to Answer.]

From the Minutes of the United States District Court, Vol. 7, Page 532, Friday, July 7, 1911.

[Title of Court and Cause.]

On this day came Mr. W. T. Rawlins, Assistant United States District Attorney, on behalf of the respondent herein, Raymond C. Brown, Inspector in Charge of the Immigration Service of the United States, who was present as was the petitioner herein also, and it appearing to the Court that the respondent herein has not had sufficient time in which to make answer to the petition, it was by the Court ordered that the respondent herein have to and including July 13, 1911, at 10 o'clock A. M., to make answer to said petition, and that the petitioner,

Suekichi Tsuji, be remanded to the custody of the respondent herein. [10]

[Order Admitting Petitioner to Bail Upon Giving of Bond.]

From the Minutes of the United States District Court, Vol. 7, Page 533, Saturday, July 8, 1911.

[Title of Court and Cause.]

On this day came Mr. J. Lightfoot, counsel for the petitioner herein, and Mr. R. W. Breckons, United States Attorney, on behalf of the respondent herein, Raymond C. Brown, Inspector in Charge of the Immigration Service of the United States, who was absent, as was the petitioner herein also, and upon motion of Mr. Lightfoot, counsel for said petitioner, that petitioner be admitted to bail upon his furnishing a satisfactory bond, it was by the Court ordered that the petitioner be admitted to bail upon his giving a bond in the sum of \$2,000. [11]

[Order Extending Respondent's Time to Answer Until July 18, 1911.]

From the Minutes of the United States District Court, Vol. 7, Page 539, Thursday, July 13, 1911.

[Title of Court and Cause.]

On this day came Mr. R. W. Breckons, United States Attorney, on behalf of the respondent herein, Raymond C. Brown, Inspector in Charge of the Immigration Service of the United States, who was absent as was the petitioner herein and his counsel also. It was by the Court ordered that this matter

be continued to July 18, 1911, at 10 o'clock A. M., for answer to the petition herein by the respondent.

[12]

[Order Continuing Matter to July 21, 1911, for Hearing on Petition.]

From the Minutes of the United States District Court, Vol. 7, Page 543, Tuesday, July 18, 1911.

[Title of Court and Cause.]

On this day came Suekichi Tsuji, the petitioner herein, with his counsel Mr. J. Lightfoot, and the respondent herein Raymond C. Brown, United States Inspector of Immigration, with Mr. R. W. Breckons, United States District Attorney, whereupon. Mr Breckons stated to the Court that the return of said respondent has been this day filed, and upon motion of Mr. Breckons, it was by the Court ordered that this cause be continued to July 21, 1911, at 9 o'clock A. M., for hearing on the petition for a writ of habeas corpus herein. [13]

In the District Court of the United States, in and for the Territory and District of Hawaii.

In the Matter of the Application of TSUJI SUEKICHI for a Writ of Habeas Corpus.

Return of Raymond C. Brown to Writ of Habeas Corpus.

The Return of Raymond C. Brown, Esq., United States Immigration Inspector in Charge at the Port of Honolulu, Territory of Hawaii, to the Writ of Habeas Corpus Hereto Attached:

In obedience to the writ of habeas corpus heretofore issued in this case, I do hereby certify and return to the Honorable CHARLES F. CLEMONS, Judge of the above-entitled court, as follows:

First. I am and have been for more than five years last past United States Inspector of Immigration in charge at the port of Honolulu, in the Territory of Hawaii.

Second. That heretofore and on, to wit, the 17th day of June, A. D. 1911, one TSUJI SUEKICHI arrived at the port of Honolulu, in the District and Territory of Hawaii, by the steamship "Korea," from the Empire of Japan.

Third. That on the arrival of the steamship "Korea," at the port of Honolulu, on the 17th day of June, it did not appear to the examining Immigration Inspector of the United States of America, who examined the said TSUJI SUEKICHI, that the said TSUJI SUEKICHI was clearly and beyond doubt entitled to land, and thereupon the said TSUJI SUEKICHI, was detained for examination in relation thereto, by a Board of Special Inquiry. [14]

Fourth. That during all times in the month of June, A. D. 1911, the said Harry B. Brown, Edwin Farmer and Louis Caesar were a duly appointed, qualified and acting Board of Special Inquiry at the port of Honolulu, in the said Territory and District.

Fifth. That thereafter and on, to wit, the 19th day of June, A. D. 1911, the said Board of Special Inquiry did convene and did accord to the said TSUJI SUEKICHI a hearing concerning the right of him, the said TSUJI SUEKICHI, to land in the

United States of America, and that thereafter and on, to wit, the 19th day of June, A. D. 1911, the said Board of Special Inquiry did hold and determine that the said TSUJI SUEKICHI had no right to land in the United States of America, and ordered that the said TSUJI SUEKICHI be rejected and sent back to Japan, as a person convicted of the crime involving moral turpitude. A copy of the record of the Special Board of Inquiry is attached hereto and made a part hereof and marked Exhibit "A."

Sixth. That thereafter and on, to wit, the said 19th day of June, A. D. 1911, the said TSUJI SUEKICHI did waive his right of appeal from the said finding and order of the said Board of Special Inquiry and that at no time since the said 19th day of June, A. D. 1911, has the said TSUJI SUEKICHI appealed from said finding and order.

Seventh. That the said TSUJI SUEKICHI is not a citizen of the United States, but is a subject of the Empire of Japan, and was within the meaning of the laws of the United States of America, an alien who had been convicted of the crime involving moral turpitude.

Eighth. Prior to the time when the said Board of Special Inquiry did order that the said TSUJI SUEKICHI be deported, a hearing was accorded said TSUJI SUEKICHI on the question of whether [15] or not he had been convicted of the crime involving moral turpitude; upon said hearing the said TSUJI SUEKICHI did testify as is set forth in the proceedings of said Board in Exhibit "A."

(Sgd.) RAYMOND C. BROWN.

United States of America,
Territory of Hawaii,—ss.

Raymond C. Brown, being first duly sworn according to law, deposes and says that he is the Raymond C. Brown who has made the return to the writ of habeas corpus in the above-entitled cause, that he has read the said return, and knows the contents thereof, and that the facts therein stated are true.

(Sgd.) RAYMOND C. BROWN.

Subscribed and sworn to before me this 18th day of July, A. D. 1911.

[Seal] (Sgd.) F. L. DAVIS,
Deputy Clerk, United States District Court, Territory of Hawaii. [16]

[Exhibit "A" to Immigration Inspector's Return to Writ—Record of Board of Special Inquiry, U. S. Immigration Service.]

UNITED STATES IMMIGRATION SERVICE.
Record of Board of Special Inquiry. Convened
June 19, 1911.

Members of Board: Harry B. Brown, Edwin Farmer and Louis Caesar.

Case of TSUJI SUEKICHI. Manifest N 1-1.

Ex. SS. "Korea," June 17, 1911. Intr. Katsunuma.

[Testimony of Tsuji Suekichi, Before Board of Special Inquiry, U. S. Immigration Service.]

Alien sworn, testifies:

(By Inspr. HARRY B. BROWN.)

Q. What is your name? A. Tsuji Suekichi.

Q. What is your age? A. 29, 11 months.

- Q. Are you traveling alone? A. Yes.
- Q. Where were you born?
- A. Hongomura, Fukuoka Ken, Japan.
- Q. Are you married or single? A. Married.
- Q. What is the name of your wife?
- A. Marsuzo.
- Q. How many children have you?
- A. One child.
- Q. What is the age and name?
- A. Etsuji, 10 yrs. old.
- Q. Boy or girl? A. Boy.
- Q. Where is your wife? A. Honolulu.
- Q. Where is your son? A. Japan.
- Q. Where was your son born?
- A. Same place of myself.
- Q. Can you read and write?
- A. Yes, only my name.
- Q. On what ship and from what port did you arrive? A. SS. "Korea," from Nagasaki.
- Q. Who paid your passage? *Self.*
- Q. What is your occupation?
- A. Farm laborer, Japan.
- Q. Have you been in United States before?
- A. Yes.
- Q. Where? A. Honolulu.
- Q. When did you first come to Honolulu?
- A. July, 1906.
- Q. When did you go to Japan?
- A. It was in Sept., 1910.
- Q. Are you going to join anyone here?
- A. No, simply going to Honolulu.
- Q. Have you notified anyone of your arrival here?

A. No.

Q. How much money have you with you?

A. About \$2.

Q. What did you work at while you were in Hawaii?
A. Hackdriver.

Q. How long were you a jack-driver?

A. About 2 years.

Q. Where was your stand? A. Kukui Street.

Q. Where did you live? A. Palama.

Q. Did you live with your wife? A. Yes.

Q. What did she do? A. She was a prostitute.

Q. Where did she practice prostitution?

A. Iwilei.

Q. When did she start to practice prostitution in Iwilei?
A. I cannot remember when it was.

Q. Was it about the time you started to drive a hack?
A. I think not.

Q. After or before?

A. After I started my hack business.

Q. In your business it sometimes came to take persons to Iwilei, was it not? A. Yes, sir.

Q. And when a man told you to take him to Iwilei did you take him to where your wife was?

A. No, sir.

Q. While she was practicing prostitution did she turn over her earnings to you or did you receive any part of them? A. No, sir.

Q. Have you ever been convicted of any crime in any of the courts of the U. S. or Japan?

A. Not in Japan.

Q. In the United States? A. Yes.

Q. What Court?

(Case of Tsuji Suekichi.)

A. The U. S. Court, Honolulu. [17]

Q. Were you sent to jail? A. Yes.

Q. For how long? A. 3 months.

Q. Did you serve your sentence? A. Yes.

Q. Was there a fine attached to your sentence?

A. No, sir.

Q. Of what crime were you convicted?

A. My wife practiced prostitution.

Q. Where did you get the money to go to Japan?

A. With money which I sold my hack.

Q. Have you sent your wife any money since you have been in Japan? A. No.

Q. Have you been divorced from this woman?

A. No, sir.

Q. Are you going to live with her again?

A. Yes.

Q. When did you receive the last letter from her?

A. I cannot remember.

Q. Was she still practicing prostitution when you received that letter?

A. She did not mention that part.

Q. Was she practicing prostitution when you went to Japan?

A. Yes, but I am going to stop that business.

Q. How long *have you been* released from jail did you go to Japan? A. About 7 months.

Q. Did you cohabit with your wife after you had been released from jail and before you left for Japan? A. Yes.

Q. It is a fact that you were convicted and sentenced and served your sentence as a result of being

implicated and connected with your wife in her business as a prostitute; she being a prostitute and you being a procurer or pimp as it were?

A. Yes, exactly.

Q. Have you made arrangements in Japan for some more to come here?

A. No. I returned to Japan for my health.

Q. Is there any further statement you wish to make? A. No.

(Inspr. FARMER.)

Q. Did your wife ever practice prostitution in Japan before she came here? A. No.

I move that this alien be rejected and be sent back to Japan as a person convicted of a crime involving moral turpitude, as provided in Section 2, of act of Feb. 20, 1907.

Mr. CAESAR.—I second the motion.

Inspr. BROWN.—It is so ordered.

ALIEN REJECTED AND NOTIFIED OF HIS
RIGHT TO APPEAL.

(Sgd.) HARRY B. BROWN,

(Sgd.) EDWIN FARMER,

(Sgd.) LOUIS CAESAR,

Board of Special Inquiry.

June 20, 1911—Alien waives his right of appeal.

[18]

(Case of Tsuji Suekichi.)

The foregoing testimony is a correct record of my statements before the Board of Special Inquiry.

(Sgd.) JAPANESE CHARACTERS.

Before signing the above, the applicant heard the testimony translated to him, by me, in the Japanese

language, and he acknowledged it to be a true and correct record of his statements before the Board of Special Inquiry.

(Sgd.) TOMIJO KATSUNUMA,
Japanese Interpreter.

The applicant was told of his right of appeal, by me acting as Japanese interpreter for the Inspector in Charge, and thereupon he, the applicant, stated to the Inspector in Charge, through me as Japanese interpreter, that he desired to waive such right.

(Sgd.) TOMIJO KATSUNUMA,
Japanese Interpreter.

[Endorsed]: No. 42. (Title of Court and Cause.)
Return of Raymond C. Brown to Writ of Habeas Corpus. Filed, Jul. 18, 1911. A. E. Murphy, Clerk.
By (Sgd.) F. L. Davis, Deputy Clerk. [19]

*In the District Court of the United States, in and for
the Territory and District of Hawaii.*

In the Matter of the Application of TSUJI SUE-
KICHI for a Writ of Habeas Corpus.

**Supplemental Return of Raymond C. Brown to Writ
of Habeas Corpus.**

Comes now RAYMOND C. BROWN, supplementing the return in the above-entitled matter heretofore made on the 18th day of July, A. D. 1911, and says as follows, to wit: That heretofore and on, to wit, the 18th day of April, A. D. 1909, the above-named Tsuji Suekichi was indicted in the District Court of the United States, within and for the Territory and District of Hawaii, for the crime of im-

[Indictment.]

United States of America,
District of Hawaii,—ss.

*In the District Court of the United States in and for
the District Aforesaid, at the October Term
Thereof, A. D. 1908.*

THE GRAND JURORS OF THE UNITED STATES, impaneled, sworn and charged at the Term aforesaid of the Court aforesaid, on their oath present that SUEKICHI TSUJI, on the first day of December, in the year of our Lord one thousand nine hundred and eight, in the said District and within the jurisdiction of this Court, did unlawfully and feloniously keep, maintain, control, support and harbor, within a certain house and place within the Territory and District of Hawaii, for a certain immoral purpose, to wit, for the purpose of prostitution, a certain alien woman named MASUYO TSUJI, she, the said MASUYO TSUJI, having within three years of said first day of December, in the year of our Lord one thousand nine hundred and eight, to wit, on the twenty-eighth day of August, in the year of our Lord one thousand nine hundred and six, entered the United States of America, at the port of Honolulu, in the District and Territory of Hawaii, from the Empire of Japan, contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the United States of America.

ROBERT W. BRECKONS,
United States Attorney.

[Endorsed]: No. 42. (Title of Court and Cause.)
Supplemental Return of Raymond C. Brown to Writ
of Habeas Corpus. Filed, Jul. 19, 1911. A. E. Mur-
phy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk.
[22]

**[Order Continuing Cause for Hearing Until
Called Up.]**

From the Minutes of the United States District
Court, Vol. 7, Page 546, Friday, July 21, 1911.

[Title of Court and Cause.]

On this day came Suekichi Tsuji, the petitioner
herein, with his counsel, Mr. J. Lightfoot and Mr.
R. W. Breckons, United States District Attorney,
counsel for the respondent Raymond C. Brown, and
this cause was called for hearing on petition for writ
of habeas corpus. Thereupon it was by the Court
ordered that this cause be continued for hearing
until called up. [23]

*In the District Court of the United States, in and
for the District and Territory of Hawaii.*

In the Matter of the Application of SUEKICHI
TSUJI, for a Writ of Habeas Corpus.

Answer.

Now comes Suekichi Tsuji, petitioner above
named, and for answer to the return and Supple-
mental Return filed in the above-entitled court and
cause by Raymond C. Brown, respondent, says:

FIRST:

Petitioner admits each and every the allegations

contained in the said return and supplemental return.

SECOND:

Petitioner is informed and believes, and upon such information and belief, alleges and avers that the indictment attached to respondent's supplemental return together with all proceedings had thereon, including the plea of guilty entered thereon by the petitioner, is null and void, for the reason that the law alleged in said indictment to have been violated by petitioner as unconstitutional and void.

THIRD:

And for further answer to said return and amended return this petitioner further shows: That he is entitled to land in the Territory of Hawaii by reason of the following facts, to wit:

The petitioner is a subject of the Emperor of Japan; that heretofore, to wit, on or about the 27th day of July, A. D. [24] 1906, petitioner arrived at Honolulu, Oahu, aboard the S. S. "Manchuria," he having embarked on said steamship in Japan, and thereupon petitioner was duly admitted to the Territory of Hawaii, and since the last-mentioned date has had his domicile in Honolulu aforesaid.

That prior to the arrival of petitioner in the Territory of Hawaii as aforesaid, he had been duly and lawfully married according to the laws of the Empire of Japan to Masa Tsuji, and that said Masa Tsuji arrived in Honolulu aforesaid, on or about the 28th day of August, A. D. 1906, aboard the S. S. "America Maru"; and at all times since the last mentioned date to the date hereof the said Masa Tsuji has resided and had her domicile in Honolulu aforesaid.

That on or about the 26th day of September, A. D. 1910, petitioner departed from the port of Honolulu aboard the S. S. "China," bound for the Empire of Japan, to which country petitioner desired to go for a short *visti*, and upon leaving said port of Honolulu and at all times thereafter, petitioner intended to return to said Honolulu and to continue to reside in said Honolulu; that said petitioner, during his intended temporary absence as aforesaid, left his said wife in Honolulu aforesaid.

That petitioner returned to the port of Honolulu on or about the 17th day of June, A. D. 1911, aboard the S. S. "Korea."

That upon the arrival of petitioner at the port of Honolulu, on the date last aforesaid, and at all times since the last-mentioned date, Raymond C. Brown, Esq., United States Immigration Inspector at the said port of Honolulu, has refused a landing to your petitioner, as petitioner is informed and believes [25] and upon such information and beliefs alleges and avers, under the claim or pretense that your petitioner is an immigration alien and as such, a person belonging to an excluded class under the Immigration Laws of the United States; whereas in truth and in fact, your petitioner is a nonimmigrant alien and not subject to said Immigration Laws.

WHEREFORE PETITIONER PRAYS that the writ of habeas corpus heretofore issued herein be sustained and that petitioner be discharged.

Dated Honolulu, July 24th, 1911.

(Sgd.) JAPANESE CHARACTERS.

(SUEKICHI TSUJI.)

United States of America,
Territory of Hawaii,—ss.

Now comes Suekichi Tsuji, and first being duly sworn on oath deposes and says: That he is the petitioner above named; that he has read the foregoing answer and knows the contents thereof and that the same is true, except as to the matters therein alleged on information and beliefs, and as to those he believes it true.

(Sgd.) JAPANESE CHARACTERS.

(SUEKICHI TSUJI.)

Subscribed and sworn to before me this 24th day of July, A. D. 1911.

[Seal] (Sgd.) J. B. LIGHTFOOT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. [26]

[Endorsed]: No. 42. (Title of Court and Cause.)
Answer. Filed Jul. 24, 1911. A. E. Murphy, Clerk.
By (Sgd.) F. L. Davis, Deputy Clerk. [27]

[Order of Submission.]

From the Minutes of the United States District
Court, Vol. 7, Page 548, Wednesday, July 26,
1911.

[Title of Court and Cause.]

On this day came the petitioner herein, Suekichi Tsuji, with his counsel, Mr. J. Lightfoot, and the respondent herein, Mr. Raymond C. Brown, United States Inspector of Immigration, with his counsel, Mr. R. W. Breckons, United States District Attor-

ney, and this cause was called for hearing on the petition herein upon motion of Mr. Lightfoot, counsel for said petitioner. Due argument having been had by respective counsel, the matter was taken under advisement by the Court for decision. [28]

[Minutes of July 29, 1911, Re Argument, Decision and Appeal.]

ORDER DISCHARGING PETITIONER FROM CUSTODY.

From the Minutes of the United States District Court, Vol. 7, Page 549, Saturday, July 29, 1911.

[Title of Court and Cause.]

On this day came Mr. J. Lightfoot, counsel for the petitioner herein, Suekichi Tsuji, and Mr. R. W. Breckons, counsel for the respondent herein, Mr. Raymond C. Brown, United States Immigration Inspector, who was present. After due argument by respective counsel, the Court rendered its decision, discharging the petitioner from the custody of the respondent herein, subject, however, to his furnishing a recognizance with surety in the sum of Five Hundred Dollars (\$500.00), to answer the judgment of the appellate court. Mr. Breckons, on behalf of the respondent herein, noted an appeal to the ruling of the Court, which was allowed. [29]

[Decision.]

*In the United States District Court for the Territory
of Hawaii.*

APRIL A. D. 1911 TERM.

No. 42.

In the Matter of the Application of SUEKICHI
TSUJI for a Writ of Habeas Corpus.

July 29, 1911.

1. *Aliens—Immigration laws—Right of domiciled alien criminal to re-enter:* Domiciled aliens returning from a temporary absence abroad, are not excluded from admission to the United States by the Immigration Act (Act of Feb. 20, 1907, 34 Stat. 898, amended by Act of March 26, 1910, 36 Stat. 263), even though of the criminal class (Act, Section 2).
2. *Courts—Rules of decision—Decision of appellate court:* This court is bound, as a rule, to follow the decisions of its superior court, the Circuit Court of Appeals for the Ninth Circuit, in a similar case. *United States vs. Nakashima*, 160 Fed. 842 followed.
3. *Same—Decision of associate judge:* The ruling of one member of this court should be followed by his associate unless extraordinary reasons require its consideration.
4. *Statutes—Construction:* As a rule, the intent of a statute is to be ascertained solely from the language used.

Petition for Writ of Habeas Corpus.

J. LIGHTFOOT, Attorney for Petitioner.

ROBERT W. BRECKONS, U. S. District Attorney, for Respondent.

A writ of habeas corpus issued herein directed to the United States Immigration Inspector at the port of Honolulu as respondent, based upon the claim of the petitioner, Suekichi Tsuji, that he was illegally held in custody by the inspector. From the petition, the respondent's return and supplemental return, and the petitioner's answer to the returns, the following facts appear: The petitioner, a subject of the Emperor of Japan, came to Honolulu in July, 1906, and a month later was followed by his wife. Ever since arrival they have both had their residence and domicile in Honolulu, except that the petitioner was absent temporarily on a *visti* from September, 1910, to June, 1911, when he returned to Hawaii. In April, 1909, he was in this court indicted for the crime of harboring an alien woman, his own wife, for the purpose of prostitution, and in November, 1909, on a plea of guilty, was sentenced to three months' imprisonment, which sentence was duly executed. On his return to Honolulu he was examined by a board of special inquiry which, after due hearing, determined that he had no right to land in the United States, and ordered him deported as a person convicted of a crime involving moral turpitude.

The contentions of the petitioner are: (1) That the above indictment and all proceedings thereon including the plea of guilty, are null and void as founded on an unconstitutional [31] statute; (2)

That he is a nonimmigrant alien and not subject to the immigration laws.

The question suggested in argument, of this court's jurisdiction, or of the finality of the decision of the board of special inquiry, is not raised by the pleadings, and was by counsel practically conceded to have been settled for this court by its previous decisions and the affirmance of the Circuit Court of Appeals. *In re Chop Tin*, 2 Haw. Fed. 153; *In re Nakashima*, 3 Haw. Fed. —; *United States vs. Nakashima*, 160 Fed. 842, 846, 847.

The question of the constitutionality of the statute under which the petitioner was indicted has, also, been settled here. *In re Shigematsu Umeno*, 3 Haw. Fed. —, now pending on appeal to the Supreme Court. See *United States vs. Weis*, 181 Fed. 860.

It remains to be determined, whether the petitioner is within the provisions of the immigration laws,—whether these laws apply to nonimmigrant aliens.

The contention in the respondent's behalf is that the immigration laws now in force (Act of February 20, 1907, 34 Stat. 898, as amended by Act of March 26, 1910, 36 Stat. 263), and those superseded by the Act of 1907 (Act of March 3, 1903, 32 Stat. 1213) do not purport to amend previous laws, but to remodel and reconstruct the entire immigration system; that Congress had in view not only undesirable immigrants, in the narrower sense of the word, i. e., aliens coming to our country for the first time to seek residence here, but also all aliens of the undesirable classes specified in section 2 of the Act, whether coming [32] for the first time, or returning after an aban-

donment of their domicile here, or returning after a temporary absence. And it is attempted to distinguish the decision in the *Nakashima Case*, 160 Fed. 843, by the fact of that decision's being based on laws enacted prior to 1907 and not so broad as the statute of that year (34 Stat. 898). It is also argued in favor of a broad interpretation of the act as against persons convicted, or admitting the commission, of a crime of the particular character of which the petitioner has been convicted, that Congress in its deliberations over the new act of 1907, had before it especially the matters of preventing the importation of alien women for the purpose of prostitution, and of suppressing the traffic of pimps and procurers, and that diplomatic negotiations were then pending which, about the time of the passage of the act, culminated in a treaty directed against these evils; that this contemporaneous history shows Congress to have intended to prevent the coming in of all aliens of the petitioner's class.

Beyond question, the petitioner would, if a new-comer, be proscribed by section 2 of the act as amended (36 Stat. 263). Does this section apply to new-comers? Or, does it apply to all aliens whether coming here for the first time or returning from a temporary absence?

As to the respondent's reliance upon the adoption, in the act of 1903 and subsequent acts, of the broader term "alien" instead of the narrower term "immigrant" used in [33] earlier acts, the question has been settled for this jurisdiction adversely to his contention. *United States vs. Nakashima*, 160 Fed.842.

Through the Supreme Court in overruling the decision in *Taylor vs. United States*, 152 Fed. 1, in which the same question is raised, leaves the question open, 207 U. S. 120, 126, we are bound, by the general rule at least, to follow the decision of our superior court of the Ninth Circuit in the *Nakashima Case*. *Roche vs. Jordan*, 175 Fed. 234, 235; *Continental Securities Co. vs. Interborough R. Co.*, 165 Fed. 945, 959-960; *In re Baird*, 154 Fed. 215; *Edison Electric Light Co. vs. Bloomington*, 65 Fed. 212, 214; *Norton vs. Wheaton*, 57 Fed. 927-928; *Dent vs. United States*, 8 Ariz. 413, 76 Pac. 455.

Also, the present judge would, unless for very good reasons not existing here, follow the decision of his senior associate in the *Nakashima Case*, 3 Haw. Fed. ——. See *United States vs. Hoshi*, 3 Haw. Fed. ——; *United States vs. Ichitaro Ishibashi*, 3 Haw. Fed. ——.

And, at all events, in spite of some rulings to the contrary, e. g., *Taylor vs. United States*, 152 Fed. 1, *United States vs. Villet*, 173 Fed. 500, *Ex parte Hoffman*, 179 Fed. 839, *United States vs. Williams*, 186 Fed. 354, we believe the decisions in the *Nakashima Case*, 3 Haw. Fed. ——, and 160 Fed. 842, 844-845, and the reasoning of Circuit Judge Wallace, dissenting, in the *Taylor Case*, 152 Fed. 1, 7-8, to be sound. The contra decisions seem not to give due, if any, attention to the parol evidence rule as applied to the interpretation of statutes. See 4 Wigmore, Ev., sec. 2478; 2 Lewis' Sutherland on Statutory Construction, 882-883, sec. 470; *United States vs. Freight Assn.*, 166 U. S. 290, 318-319; [34] *United States*

vs. Union Pacific R. Co., 91 U. S. 72, 79; *United States vs. Oregon & C. R. Co.*, 57 Fed. 426, 429; *Keyport Steamboat Co. vs. Farmers' Transportation Co.*, 18 N. J. Eq. 13, 24.

Further, it is no violent supposition that the law-makers had in mind what everyone is presumed to know,—the law as declared by the courts. And, in the face of contemporaneous decisions such as those of *Rogers vs. United States*, 152 Fed. 346; s. c. (*In re Buchsbaum*) 141 Fed. 221; *United States vs. Aultman*, 143 Fed. 922, and even of the contra decision in *Taylor vs. United States*, 152 Fed. 1, wherein doubt was raised by a strong dissent, it would seem that Congress, if intending so radical a change, would, and should, have placed beyond any question the expression of its intent. *In re Nakashima*, 3 Haw. Fed. —; *United States vs. Aultman*, 143 Fed. 922, 928. And legislatures should not be encouraged in putting the people, who are presumed to know law, to the necessity of looking for the intent of a statute beyond its face. 18 N. J. Eq., 13, 24, above cited.

The petitioner is discharged subject to the taking of an appeal, in which case he may be released upon giving a recognizance with surety in an amount to be fixed by the court to answer the judgment of the appellate court.

[Sgd.]

CHAS. F. CLEMONS,
Judge, U. S. District Court.

[Endorsed]: No. 42. (Title of Court and Cause.)
Decision of Clemons, J. Filed. Saturday, July 29,
1911. A. E. Murphy, Clerk. By (Sgd.) Geo. R.
Clark, Deputy Clerk. [35]

In the District Court of the United States, in and for the Territory and District of Hawaii.

In the Matter of the Application of TSUJI SUEKICHI, for a Writ of Habeas Corpus.

Judgment.

At the regular April, A. D. 1911 term of the District Court of the United States for the District and Territory of Hawaii, held in the Courtroom of said Court, in the City of Honolulu, District and Territory aforesaid, on Saturday, the 29th day of July, A. D. 1911, the above-entitled Cause having heretofore been heard on the pleadings and arguments by counsel for the respective parties and due deliberation had thereon, the Court finds that the above-entitled petitioner, Tsuji Suekichi, is entitled to be discharged, subject to the taking of an appeal, in which case he may be released upon giving a recognizance with sureties in the sum of Five Hundred Dollars (\$500.00) to answer the judgment of the Appellate Court.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above-named petitioner, Tsuji Suekichi, be and he is hereby discharged from custody herein subject to the taking of an appeal.

And the Court being advised that the above-entitled action will be removed to the Appellate Court by proper proceedings to be had in that behalf.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the above-named

petitioner, Tsuji Suekichi, give his recognizance with surety, in the sum and amount of Five [36] Hundred Dollars (\$500.00), to answer the judgment of the appellate Court, and that upon the giving of such recognizance the said petitioner, Tsuji Suekichi, be released from custody.

GIVEN, MADE AND DATED at Honolulu, Hawaii, this 31st day of July, A. D. 1911.

(Sgd.) CHAS. F. CLEMONS,
Judge.

[Endorsed]: No. 42. (Title of Court and Cause.) Judgment. Entered in J. & D. Book 2, at page 235. Filed, Jul. 31, 1911. (Sgd.) A. E. Murphy, Clerk. [37]

[Order Directing Amendment of Recognizance, etc.]
From the Minutes of the United States District Court, Vol. 7, Page 564, Saturday, August 5, 1911.
[Title of Court and Cause.]

On this day came Mr. W. T. Rawlins, Assistant District Attorney, counsel for the respondent herein, Mr. Raymond C. Brown, United States Inspector of Immigration, said petitioner, his counsel, Mr. J. Lightfoot, and the respondent herein being absent. Upon motion of Mr. Rawlins that the form of the recognizance heretofore filed herein in the sum of \$500.00 by the petitioner covering an appeal to the Supreme Court be amended to cover an appeal to the Ninth Circuit Court of Appeals, it was so ordered by the Court and the Clerk was instructed by the Court to notify Mr. J. Lightfoot, counsel for said petitioner, to file an amended recognizance. [38]

[Order Granting Petition for Appeal, etc.]

From the Minutes of the United States District Court, Vol. 7, Page 569, Monday, August 7, 1911.

[Title of Court and Cause.]

On this day came Mr. W. T. Rawlins, Assistant District Attorney, counsel for the respondent herein, Mr. Raymond C. Brown, Inspector in Charge of the Immigration Service of the United States, who presented to the Court a Petition for Appeal herein, and thereupon the Court made the following order, viz: Upon application and motion of R. W. Breckons, United States Attorney for the Territory of Hawaii: It is Hereby Ordered that the petition for appeal heretofore filed herein by the United States of America be, and the same is hereby granted; and that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final order and judgment heretofore, on July 31st, 1911, filed and entered herein, be and the same is hereby allowed, and that a transcript of the record of all proceedings and papers upon which said final order and judgment is made, duly certified and authenticated, be transmitted, under the hand and seal of the Clerk of this Court, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit of the United States, at San Francisco, in the State of California." [39]

*In the United States District Court for the Territory
of Hawaii.*

No. —.

In the Matter of the Application of TSUJI SUE-
KICHI, for a Writ of Habeas Corpus.

Recognizance.

The United States of America,
Territory and District of Hawaii,—ss.

Be it remembered, that on the 31st day of July, A. D. 1911, before me, A. E. Murphy, Clerk of the District Court of the United States within and for the Territory and District of Hawaii, duly appointed by said Court and duly qualified and acting as such Clerk, personally came Tsuji Suekichi, as principal, and M. Yamashiro and M. Mamiya, as sureties, and jointly and severally acknowledged themselves to owe the United States of America the sum of Five Hundred Dollars (\$500.00), to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to-wit:

THE CONDITION OF THIS RECOGNIZANCE is such, that whereas, by the judgment of the above-entitled court in the above-entitled action dated July 31, 1911, the above-named Tsuji Suekichi was ordered discharged from custody, subject to the taking of an appeal; and,

WHEREAS, said Court, being advised that the above-entitled action will be removed to the Appellate Court by proper proceedings in that behalf, further ordered that said Tsuji Suekichi give his

recognizance with surety in the sum and amount of Five Hundred Dollars (\$500.00) to answer the judgment of the Appellate Court, and that, upon the giving [40] of such recognizance, said Tsuji Suekichi shall answer, abide by and render himself in execution of, and obey, all orders and judgment of the Appellate Court herein, whether that Appellate Court be the United States Circuit Court of Appeals for the Ninth Circuit or the Supreme Court of the United States, and in all respects subject himself to whatever action may be taken in or by such Appellate Court, then this recognizance to be void; otherwise to remain in full force, virtue and effect.

(Sgd.) JAPANESE CHARACTERS.

(TSUJI SUEKICHI),

Principal.

(Sgd.) M. YAMASHIRO,

Surety.

(Sgd.) H. MAMIYA,

Surety.

Taken and acknowledged before me the day and year first above written.

[Seal]

A. E. MURPHY,

Clerk, U. S. District Court, T. of H.

By (Sgd.) Geo. R. Clark,

Deputy Clerk.

United States of America,

Territory and District of Hawaii,—ss.

M. Yamashiro and M. Mamiya, parties to the above bond, being duly sworn, do depose and say, each for himself, that he is worth the sum of Five Hundred Dollars (\$500.00), over and above his just

debts, liabilities and exemptions, and that his property is situate in said Territory and subject to execution.

(Sgd.) M. YAMASHIRO.

(Sgd.) H. MAMIYA.

Subscribed in my presence and sworn to before me this 8th day of August, 1911.

[Seal]

A. E. MURPHY,
Clerk, U. S. District Court, Territory of Hawaii.

By (Sgd.) Geo. R. Clark,
Deputy Clerk.

Approved as to form and as to sufficiency of sureties.

U. S. District Attorney.

Approved:

(Sgd.) CHAS. F. CLEMONS, Judge. [41]

[Endorsed]: No. 42. (Title of Court and Cause.)
Amended Recognizance. Filed Aug. 8, 1911. A. E. Murphy, Clerk. By (Sgd.) Geo. R. Clark, Deputy Clerk. [42]

*In the United States District Court for the Territory
of Hawaii.*

April A. D. 1911 Term.

No. 42.

In the Matter of the Application of TSUJI SUEKICHI for a Writ of Habeas Corpus.

Petition for Appeal.

To the Honorable CHARLES F. CLEMONS, Judge
of the Above-entitled Court.

The United States of America, by its attorney,

Robert W. Breckons, conceiving itself aggrieved by the order and judgment made and entered on the 31st day of July, A. D. 1911, in the above-entitled proceeding, does hereby appeal from the said order and judgment to the Circuit Court of Appeals for the Ninth Circuit, and files herewith its assignment of errors intended to be urged upon appeal, and it prays that its appeal may be allowed, and that a transcript of the record of all proceedings and papers upon which said order and judgment was made, duly authenticated, may be sent to the Circuit Court of Appeals of the Ninth Judicial Circuit of the United States.

Dated this 7th day of August, A. D. 1911.

(Sgd.) ROBT. W. BRECKONS,
United States Attorney.

Received a copy of the above petition.

TSUJI SUEKICHI,
By His Attorney.

(Sgd.) J. LIGHTFOOT. [43]

[Endorsed]: No. 42. (Title of Court and Cause.)
Petition for Appeal. Filed Aug. 7, 1911. A. E.
Murphy, Clerk. By (Sgd.) Geo. R. Clark, Deputy
Clerk. [44]

*In the United States District Court for the Territory
of Hawaii.*

April A. D. 1911 Term.

No. 42.

In the Matter of the Application of TSUJI SUE-
KICHI for a Writ of Habeas Corpus.

Assignment of Errors.

And now comes the United States of America, by Robert W. Breckons, its attorney, and says that in the record and proceedings in the above-entitled matter there is a manifest error, and that the final order and judgment, made and entered in said matter on the 31st day of July, A. D. 1911, is erroneous and against the just rights of said United States, in this, to wit:

First. The above-entitled Court erred in granting the application for the Writ of Habeas Corpus herein.

Second. The Court erred in holding that the provisions of the Act of Congress of February 20, A. D. 1907, "to regulate the immigration of aliens into the United States," as amended by the Act of March 26, A. D. 1910, applied to alien immigrants, but not to aliens domiciled in the United States who may have temporarily gone abroad and are returning thereto.
[45]

Third. The Court erred in holding that it could interfere with the decision of the appropriate Immigration officer adverse to the right of an alien to enter the United States.

Fourth. The Court erred in not holding that the aforesaid Act of February 20, A. D. 1907, as amended by the Act of March 26, A. D. 1910, applied to the immigration of aliens into the United States.

Fifth. The Court erred in holding that the above-named applicant should be discharged.

Sixth. The Court erred in refusing to grant the above-named applicant the relief prayed for by him herein.

Seventh. The Court erred in making and entering the final order and judgment of July 31, A. D. 1911, in favor of said applicant and against the United States, upon the pleadings and record in the above-entitled matter.

Eighth. The Court erred in making, rendering and entering said final order and judgment of July 31, A. D. 1911, in this, that said final order and judgment was and is contrary to law, and to the facts stated in the pleadings and record in the above-entitled matter.

Ninth. The Court erred in other particulars appearing upon the record.

Whereas, by the law of the land, the said application for a writ of habeas corpus should have been denied, and the said writ of habeas corpus should have been discharged, and the said applicant and petitioner should have been remanded to be dealt with according to law: [46]

And the aforesaid United States of America now prays that the order and judgment of July 31, A. D. 1911, hereinabove mentioned may be reversed, annulled, and held for naught, and that it, said United

States, may have such other and further relief as may be proper in the premises.

Dated this 7th day of August, A. D. 1911.

(Sgd.) ROBT. W. BRECKONS,
United States Attorney.

Received a copy of the above assignment of errors.

By (Sgd.) J. LIGHTFOOT,
His Attorney.

[Endorsed]: No. 42. (Title of Court and Cause.)
Assignment of Errors. Filed Aug. 7, 1911. A. E.
Murphy, Clerk. By (Sgd.) Geo. R. Clark, Deputy
Clerk. [47]

*In the United States District Court for the Territory
of Hawaii.*

April A. D. 1911 Term.

No. 42.

In the Matter of the Application of TSUJI SUE-
KICHI for a Writ of Habeas Corpus.

Order Allowing Appeal, etc.

Upon application and motion of R. W. Breckons,
United States Attorney for the Territory of Hawaii:

IT IS HEREBY ORDERED that the petition for
appeal heretofore filed herein by the United States
of America, be, and the same is hereby granted; and
that an appeal to the United States Circuit Court of
Appeals for the Ninth Circuit from the final order
and judgment heretofore, on July 31st, 1911, filed
and entered herein, be and the same is hereby al-
lowed, and that a transcript of the record of all pro-

ceedings and papers upon which said final order and judgment was made, duly certified and authenticated, be transmitted, under the hand and seal of the Clerk of this Court, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit of the United States, at San Francisco, in the State of California, dated this 7th day of August, A. D. 1911.

(Sgd.) CHAS. F. CLEMONS,

Judge U. S. District Court, District of Hawaii.

Received a copy of the above order.

TSUJI SUEKICHI,

By (Sgd.) J. LIGHTFOOT,

His Attorney. [48]

[Endorsed]: No. 42. (Title of Court and Cause.)
Order Allowing Appeal. Filed Aug. 7, 1911. A.
E. Murphy, Clerk. By (Sgd.) Geo. R. Clark, Deputy
Clerk. [49]

*In the United States District Court for the Territory
of Hawaii.*

April, A. D. 1911 Term.

No. 42.

In the Matter of the Application of TSUJI SUE-
KICHI, for a Writ of Habeas Corpus.

Citation on Appeal [Original].

United States of America,—ss.

The President of the United States, to Tsuji Sueki-
chi, Greeting:

You are hereby cited and admonished to be and
appear at the United States Circuit Court of Appeals

for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within forty-five days from the date of this writ, pursuant to an order allowing an appeal, filed in the Clerk's office of the United States District Court for the Territory of Hawaii, wherein the United States of America is appellant, and you, Tsuji Suekichi, are appellee, to show cause if any there be, why the judgment in said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf. [50]

Witness, the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 7th day of August, A. D. 1911, and of the Independence of the United States the one hundred and thirty-sixth.

CHAS. F. CLEMONS,

Judge U. S. District Court, District of Hawan.

[Seal]

Attest: A. E. MURPHY,

Clerk U. S. District Court.

Received a copy of within citation.

By J. LIGHTFOOT,

His Attorney.

[Endorsed]: No. 42. (Title of Court and Cause.)
Citation on Appeal. Filed Aug. 7, 1911. A. E. Murphy, Clerk. By (Sgd.) Geo. R. Clark, Deputy Clerk. [51]

*In the United States District Court for the Territory
of Hawaii.*

April A. D. 1911 Term.

No. 42.

In the Matter of the Application of TSUJI SUE-
KICHI for a Writ of Habeas Corpus.

Praeceptum for Transcript.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record in this cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

1. Petition for writ of habeas corpus; filed July 3, 1911.
2. Writ of habeas corpus, and return of service; filed July 6, 1911.
3. Return of R. C. Brown to writ of habeas corpus; filed July 18, 1911.
4. Supplemental return of R. C. Brown to writ of habeas corpus; filed July 19, 1911.
5. Answer to return; filed July 24, 1911.
6. Decision; filed July 31, 1911. [52]
7. Judgment; filed July 31, 1911.
8. Recognizance; filed Aug. 8, 1911.
9. Petition for Appeal; filed August 7, 1911.
10. Assignment of Errors; filed August 7, 1911.
11. Order allowing Appeal; filed August 7, 1911.
12. Citation; filed August 7, 1911.

13. All minute entries in above-entitled cause.

14. This Praecipe.

Said transcript to be prepared as required by law and the rules of this court, and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and filed in the office of the clerk of said Circuit Court of Appeals at San Francisco, before the twenty-second of September, A. D. 1911.

Dated Honolulu, Hawaii, August 7th, A. D. 1911.

THE UNITED STATES OF AMERICA,

By (Sgd.) ROBT. W. BRECKONS,

United States Attorney.

[Endorsed]: No. 42. (Title of Court and Cause.)
Praecipe for Transcript. Filed, Aug. 7, 1911. A. E. Murphy, Clerk. By (Sgd.) Geo. R. Clark, Deputy Clerk. [53]

[Certificate of Clerk U. S. District Court to Record.]

*In the District Court of the United States in and
for the District and Territory of Hawaii.*

No. 42.

In the Matter of the Application of SUEKICHI
TSUJI, for a Writ of Habeas Corpus.

United States of America,
Territory of Hawaii,—ss.

I, A. E. Murphy, Clerk of the District Court of the United States for the Territory of Hawaii, do hereby certify that the foregoing pages, numbered from 1 to 54, inclusive, is a true and complete transcript of the record and proceedings had in said court in the matter of the Application of Suekichi Tsuji for a

writ of habeas corpus, as the same remains of record and on file in my office, and I further certify that I hereto annex the original citation on appeal in said cause.

I further certify that the cost of the foregoing transcript of record is \$12.95, and that said amount has been charged by me in my account against the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court on this 11th day of September, A. D. 1911.

[Seal] A. E. MURPHY,
Clerk, United States District Court, Territory of
Hawaii. [54]

[Endorsed]: No. 2044. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Tsuji Suekichi, Appellee. In the Matter of the Application of Tsuji Suekichi for a Writ of Habeas Corpus. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Hawaii.

Filed September 19, 1911.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.